THE PARSONS GUIDE: OR THE LAW OF TITHES.

Wherein is ſhewed,

Who muſt pay Tithes, and to whom, and of what things, When, and How they muſt be paid, and how they may be recovered at this day, and how a man may be diſcharged of payment thereof.

By *W. S.* Eſq;

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THE

PARSON'S GUIDE,

OR THE

LAW

OF

TITHES.

THE REASONS Of publishing this BOOK.

HAving made this little Treatise of Tythes at the first for mine own private use, it came into my thoughts how much strife there is everywhere about the payment of Tythes & other Duties, where-to and wherein the Parson or Vicar by the present Laws of this Nation hath as good

right and property, as any man hath to the reſt parts of the profits of his Eſtate. And that this ſtrife may ariſe much from the ignorance of the Law in this matter, there being as yet no clear and full advice herein; and hoping, that when men know what the Law is herein, the one will not demand more, nor the other offer leſſe then what the Law ſets down to be due, much of this trouble may be prevented, and ſome peace procured. For this cauſe, I ſay, I have put the ſame in Print. And now if any man ſhall ſay, Why at this time, when there is ſo much talk of taking away Tythes? I anſwer him, That we have had much talk of taking away many things a long time, which are not as yet taken away, nor perhaps ever will be. And I ſuppoſe the talk of taking away Tythes is only the Tythes in the hands of Miniſters, and in relation to their Maintenance; and not the Tythes in the hands of other men. And as to theſe, I wiſh they were taken away, ſo that firſt of all a more convenient way of maintenance in ſtead thereof be provided for the Miniſter; but this I ſuppoſe

will

will ask time, and till that time, and after that time, for the help of other persons, I have taken the pains to write this little Tract; which, as it doth neither justifie nor condemn Tythes; so it will neither further nor hinder the continuance of them; and which may do some good, but certainly can do no hurt at all.

The TABLE.

Custom	Chap. 9. Sect. 1.
Discharge of Tythes.	Chap. 9.
Glebe	Chap. 1.
Mortuary	Chap. 1. and 10.
Oblations	ibid
Obventions	ibid
Parson	Chap. 1.
Plurality	Chap. 4. and Chap. 9. Sect. 1.
Tythes. The kinds thereof	Chap. 2.
The nature of them	Chap. 3.
Who must pay Tythes, and who must receive them	Chap. 4.
Of what things they are to be paid	Chap. 5.
How, when, and where they must be paid	Chap. 6.
Who must pay them, and to whom they must be paid	Chap. 7.
How they may be recovered	Chap. 8.
How they may be discharged	Chap. 9.
Vicar	Chap. 1.

THE

THE PARSONS GUIDE.

CHAP. I.

Of a Parſon and Vicar, his Parſonage and Vicarage, and Profits belonging to them.

THE Parſon at firſt was he that had the charge of a Pariſh-Church, and was called the Rector of a Church; but he is moſt properly ſo called, that hath a Parſonage where there is a Vicarage endowed.

The Vicarage is a certain portion of the Parſonage allowed to the Vicar for his Maintenance. And this portion in ſome places is a ſum of money certain. In other places it is a part of the Tythes in kind, and commonly the ſmaller Tythes; but in ſome few places the Vicar hath part of the great Tythes alſo: and he that hath the right to, and poſſeſſion of this, is called the Vicar: and he that hath the other part, is called the Parſon, who in ſome Pariſhes is the Miniſter of the place, one they call a Clergy-man or Miniſter; and in other places he is a Lay-man, where it is an Impropriation.

The profits and fruits of a Parſonage or Vicarage, belonging to the Parſon or Vicar, are his Glebe Land, (if there be any) Oblations, Obventions, Offerings and Tithes.

The Glebe is that portion of Land, Meadow, or Paſture, that is belonging to, and parſel of the Parſonage or Vicarage, over and above the Tithes.

Oblations, Obventions and Offerings ſeem to be but one thing, and that which was called meerly Spiritual. The Oblations were ſaid to be ſuch things real or perſonal, as were offered to God and his Church by Teſtament or otherwiſe. And Obventions did include Oblations and other things now unknown and loſt amongſt us. And of this nature it ſeems the Mortuary is. And the other profits are the Tithes.

CHAP. II.

Of Tithes, and their kinds.

What they are.

TIthes are a certain part of the fruit or lawful increaſe of the earth, beaſt, or mens labours, which in moſt places, and of moſt things is the tenth part, and hath been by the Law given to the Miniſters of the Goſpel, in recompence of their labour in the execution of their Office.

Their kinds.

There are three ſorts of Tithes. Some of them are Predial, that is, ſuch as come in, and ariſe yearly of the fruit and profit of the earth; ſuch as are wood, corn, grain, hay, the ſeed of Rape, Parſley, Hops, Saffron, Woad, Flax, Hemp, Darnel or Cockle, Fennel, Anniſe, and the like. Such are the fruits of Trees, as Apples, Pears, Plums, Nuts, Cherries, Wardens, Grapes, Maſt, Acorns, and the like. Such alſo (as it ſeems) are Herbs, as Rue, Sage, Mint, and the like.

Some

Some of them are Personal, and they are such as arise and grow due by the profits that come by mans honest labour and industry in some Personal work, Artifice or Negotiation, as by buying, selling, merchandizing, or by the labour of handicrafts men, such as are Carpenters, Masons, Fishers, Fowlers, Hunters, and the like.

And some Tithes are said to be mixt, such are the profits of some things that arise partly from the labour and care of men, and partly from the earth where the things are fed, of this sort are Cattel, as their young Calves, Lambs, Kids, Roes, the wool of sheep, milk and cheese of Cowes, so the eggs and chickens of Hens, Geese, Ducks, and Swans, and the like.

Amongst Predial Tithes, some of them are said to be greater, as Wood, Corn, Hay, and the like. And some of them are lesser, as the Tithe of Herbs, Flax, Hemp, and the like. And all these of the one sort, and of the other, the dispute is under the names of Tithes of harvest fruits, of woods felled and preserved to grow again, of wood not in use, nor apt for Timber, but for fire; of trees planted for fencing of grounds, in fields, pastures, and hedgrows, of Turves growing in fennish and mooriſh grounds, of pasture ground, of hay, of wool, of lambs, of calves, of pigs, of colts, of milk, of cheese, of fruits of trees, of seeds, of hemp, flax, onions, rape, of pot-herbs, of mast of Beech or Oak, of Mils driven by wind or water, of Parks, Warrens, Pools, Ponds, of wild Beasts under custody, *&c.* of Dove-cotes or Dove-houses; of bees, of fowlings, of huntings, of fishings, of swans, of geese, of eggs, of crafts and manual occupations of Trade by wares, merchandize, &c. And about all these things especially are all the Questions and Cases that follow concerning this Subject.

CHAP. III.

Of the Nature of Tythes.

TIthes by our Law were accounted an Eccleſiaſtical Inheritance, and collateral to the ſtate of the Land out of which they come, which of common right are to be paid out of all Lands, Meadows and Paſtures, and which of their proper nature originally were due only to Eccleſiaſtical perſons by Eccleſiaſtical Law; and till they were ſevered, were eſteemed meerly Eccleſiaſtical: for the ſubſtraction whereof, no remedy was given by the Common Law. Neither can any union of poſſeſſion extinguiſh or ſuſpend them, but they remain ſtill in *eſſe*, and might be demiſed or let to any ſpiritual perſon. And if a perſon impropriate had infeoffed another part of his Glebe, or had made a Leaſe of it to him, yet he ſhould have had Tythe thereof ſtill; ſo that a man might have had Tythe againſt his own Feoffment, for they were not claimed in reſpect of any ownerſhip in the Land, but *ex debito*, by the Law of God. So if a Parſon purchaſe Land within his Rectory, and after Leaſe the Parſonage, the Leſſee ſhall have Tythe of this new purchaſed Land. And a Lay-man by the Common Law, could not have had an Inheritance deſcendable and grantable of Tythes, as of other temporal Poſſeſſions, neither will they paſs by the ſame words in Grants, as other temporal Poſſeſſions will do. And therefore if one grant a ground *cum proficuis, & commoditatibus eidem pertinentibus*, the Tythes will not paſs by this. But now the Law is changed herein, for they and other Eccleſiaſtical Duties, eſpecially ſuch as came to the Crown by the Statutes of 27 *H.* 8. 31 *H.* 1. 1 *Ed.* 6. are by thoſe Statutes, and the Statutes of 32 *H.* 8. and 1. & 2 *Phil.* & *Mar.* in the hands of Lay-men temporal Inheritances, and are of the nature of other Lands, it ſhall be

be accounted Assets in the hands of an Heir. The wife shall be endowed of it, the husband tenant by the courtesie for them: real actions may be brought, and they have all other incidents of Lay-Inheritances. *Cook* 11. 14. *Dyer* 34. *Cook* 1. 3. *Cook upon Litt.* 5. 159.

CHAP. IV.

Who must pay Tithes at this day, and to whom, and who are capable of receiving and retaining of Tithes, and by what Title, and how.

TIthes by the Common Law are due of common right out of all things; and every man at this day Alien and Denizen, is bound to pay the same, that cannot shew a special exemption and freedom, by composition, custom, prescription, or some Act of Parliament. So the Kings have paid no Tithes sometimes for their Lands in their own hands. So neither the Lord Protector nor his Patentees are to pay Tithe for some of his ancient Forrest-Lands that lye in no Parish, or between two Parishes; this is not to pay Tithe. And so the Vicar in some places doth pay no Tithe to the Parson, so long as his Vicarage-Land is occupied by himself. *Cro. Jur.* 60. *Crook* 2. 44. *Broo. Dismes* 10. And it is said, If a Bishop had held Land discharged of Tithe, and made Feoffment or Lease of it, that his Lessee or Feoffee shall not pay for it, *Cook* 2. 44.

And as to the persons to whom, and capable of receipt of Tithe, albeit by the Common Law anciently, no Lay-person was capable of them, save only by way of discharge; as where a Parishoner had compounded with the Vicar or Parson for his own Tithe: Yet at this day

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any man may have them as other Lay-Inheritances, and Laymen (as they call them) as well as Clergy-men, have them. And to make Clergy-men capable of them, there were heretofore many things required, as Examination and allowance by the Bishop, subscription to the Articles of Religion, Institution and Induction into the Parsonage or Vicarage, to which the Tithes belong. But in these things the Laws are changed at this day. And therefore it seems such a Parson once capable of Tithes, cannot be made uncapable afterwards as heretofore, unless it be where he hath one Benefice of 8 l. a year and he take another: for in this Case it seems he shall lose the first. But for this, see the Statutes of 21 *Hen.* 8. 13. 28 *Hen.* 8. 13. *Cook* 4. 79. & 6. 20.

Plurality.

Prescription.

A Parson or Vicar may have Tithe out of his Parish, by a special prescription. Or he may prescribe to have a sum of Money for Tithes within his Parish of any certain man there in lieu of Tithes. And also another man may have Title to a portion of Tithes by prescription. *Brow.* 85. *Cook.* 11. 19. *Book of Entries. N. B. f.* 9. *Cook* 2. 45. *Cook* 4. 49. And a man may have his own Tithe of the Parson by agreement between them, for the Parsons life, or how they please.

CHAP. V.

Of what things Tithe is to be paid, and of what not, and out of what Land, and how.

IN general, the rule is, that Tithes must be paid of all things that are of profit, and that arise from year to year; especially of the things wherein the industry of man is helping, as in all things it is more or less helping. *Cook* 11. 16.

11. 16. *Fitz. Nat. Brev.* 53. 32. *H.* 8. 7. And so it is to be paid for, and out of all things within (not without) the Parish, that arise, grow, and happen from year to year by the Act of God alone, or by the Act of God and man together. But more particularly.

Sect. 1.

Of trees and woods.

All sorts of trees, but Timber trees, are to pay Tithe (that is) their tenth of increase, living or dead, used or sold by the owner, for the body, branches, bark, fruit, root and branches that grow out of the root. And within this rule all fruit-trees, as Apple-trees, Pear-trees, Nut-trees, Walnut-trees, and the like, are to yield the tenth of their increase of fruit yearly; and if they be cut down, the tenth of the body whether sold or kept; and if they be par'd, the tenth of their parings, whether sold or kept. So Tithe is to be paid of the fruit, body, bark & branches of all other trees not apt to Timber, as willowes, sallows though they be above twenty years growth, or of any age whatsoever, and were never cut before. So also Tithe is to be paid of *Silva cædua*, that is, Underwoods and Coppices felled and preserved to grow again, and which by good husbandry may grow again. And of all these things the Parson is to have the tenth part, as the owner hath, and at the same time when the owner doth receive his nine parts.

Of wood cut for his own use.

But of the Underwoods of Coppices parings of Fruit-trees, or other trees cut onely for mounds, or for plow-geer, for hedging and fencing of the Corn-fields or other ground within the Parish, or for fuel for the maintenance of the plow or pail, no Tithe is to be paid for it, though the Vicar have the Tithe wood, and the Parson the Tithe of the places inclosed. Nor is Tithe to be paid of Under-woods, which are digged up by the roots. Nor (as it seems) for the word of Coppices or trees that a man doth cut or spend in his own house-keeping, though he spend much, by *Hobbard* Chief Justice. But if a Parson can alledge a special custome for it, he may have Tithe for this also, *M.* 4. *Jac. B. R.*

Timber.

But for Timber Trees, such as are Oak, Ash, and Elme, which are esteemed Timber after they are twenty years old in

in all Countries, and beech, horse-beech, horn-beam, maple, aspe, and hasel, any of which may be, and are esteemed Timber in some Countries, as the usage of the Countrey, or the plenty or scarcity of other Timber there, is; for these, either living or dead, for their bodies, branches, bark, roots or germines that grow out of them, no Tithe is to be paid at all, in any case, but Tithe is to be paid for all this Timber wood, if it be cut within twenty years after the first planting of it.

For the opening whereof (in relation to wood and trees) further, these things are to be known.

1. If the Parson have Tithe of his fruit of a tree, and the same year the Owner doth fell the tree, and make it into billets or fagots, in this case the Parson shall not have Tithe for the tree; for it is a rule, that he must not have Tithe of one thing twice in one year.

2. Beech in a Countrey where there is abundance of it, is not to be accounted Timber, nor to be Tithe-free. 16 *Jac. Co. B. Pinders Case.*

3. Cherry Trees in *Buckingham* shire have been adjudged Timber and Tithe-free. *Pasch.* 17. *Jac. B. R.*

4. If a man lop a tree under twenty years growth, and after suffer the body to grow past twenty years growth, and then lop it again; in this case no Tithe shall be paid for it, though it were not Tithe-free at the fist cutting. *Co.* B, by the whole Court. *Brown* 1. *part.* 33.

5. If wood be cut to make hedges, which is not Titheable, and there be a little remaining or left of it, no Tithe shall be paid for this remnant.

6. If wood be cut down and imployed for Hop-poles, where the Parson or Vicar hath Tithe-Hops; in this case he shall not have Tithe of Hop-poles.

7. If a great Wood doth consist for the most part of Under wood, which is Titheable, & some great trees of Beeches or other wood gorw scattering amongst them; in this case Tithe may be paid, and must be, unlesse the usage be otherwise of all both great and small together. And so if a Wood do consist for the most part of Timber trees, and there is

some

ſome ſmall parcel of Underwood or buſhes growing in the ſame Wood, no Tithe ſhall be paid for this Underwood or buſhes. *Trin.* 19. *Jac. B. R. Adjudg.* 16. *Jac in C. B. Leonards Caſe.*

8. No Tithe is to be paid of Common of Eſtovers, the wood that he burns in his houſe.

See for all theſe matters, within this point of trees and wood, *Cook Rep.* 11. 48, 49. 81. *Plow.* 470. *Brownlows Rep.* 1. *Part.* 94. 2. *Part.* 150. *D. & St.* 169. Where and how this is to be paid and delivered, ſee more in *Chap.* 5. *Sect.* 1.

Sect. 2. Of Mines and Quarries.

No Tithes are to be paid of Mines or Quarries, of Iron, Braſs, Tin, Lead, Coals, Stone, Tile, Brick, Lime, Gravel, Marle, Chalk, and the like, which a man doth finde and make in his own land, for they are parcel of the inheritance, and the Parſon or Vicar hath Tithe of the Graſſe and Corn upon the ground; and it is a rule, the land muſt not pay a double Tithe; and beſides it is not a yearly profit. *Regiſter* 51. *Fitz. Nat. Brev.* 53. 9. *Broo. Diſmes* 18.

Of Houſes.

No Tithes regularly are to be paid for houſes of inhabitation, nor of any rent reſerved upon any demiſe of them; for Tithes are to be paid of things that renew yearly by the act of God. But by a ſpecial cuſtome, or by an act of Parliament, as in *London*, where the Parſons have 2 s. 9 d. out of every pound rent in lieu of Tithe, there it is good enough, *Cook* 11. 16. *Fitz. Nat. Brev.* 53. 37. *Hen.* 8. *Ch.* 12,

Of barren Heath, and waſte ground.

If any barren heath, or waſte ground, that is barren in his own Nature, and that cannot be fitted for husbandry without an extraordinary charge, although it may pay Tithe of wool, or Lamb, or any things, or the Tithe that it formerly paid, yet it ſhall pay no Tithe for Corn for ſeven years after they have by their husbandry improved it, and made it fit for Tillage. But if a wood be grubbed up, and made fit to plough, this muſt pay Tithe preſently. So if it become barren by a ſudden accident of inundation, or the like, or by being overgrown with buſhes or the like, and it be reduced, this muſt pay Tithe preſently. *M.* 11. *Jac. C. B. Sharringtons Caſe, Dyer* 170. 2. *Ed.* 6. *Ch.* 13.

Tithes are to be paid for all new Corn-mills, be they wind or water Mills; and for fulling, Paper, or Apple Mils that are common and publick Mills; and whether they be driven by wind or water, ſome Tithe or other is to be paid for them. But for an old Corn Mill, that no Tithe was ever paid for, no Tithe is to be paid, except perſonal Tithe, as for a Trade of profit, and ſo it will be for the other Mills. But ſee how it is to be paid *Chap.* 5. *Sect.* 1.

Of Turves. Tithes are to be paid of Turves that grow in fenniſh and mooriſh grounds, when they are uſed for firing.

Of Heath, Furs and Broom. Tithes ſhall be paid of heath, furrs and broom, unleſs the owner can perſcribe, or make good a ſpecial cuſtom of payment of milk or calves, &c. of the cattel kept upon the ground, *M.* 29. *El. B. R. Adjudg.*

Sect. 3. Of Graſs, cut or eaten. Tithe is to be paid of the graſſe growing on the ground, whether it be cut for hay, or eaten by cattel, to be ſet out according to the cuſtome of the place: and as to this kind of Tithe theſe things are to be known.

Rate Tythe. A rate Tithe to be paid according to the cuſtome of the place for the feeding of Sheep and all other cattel, (ſave only Oxen that labour, and the young Cattel that are bred for Oxen or Cowes) as for Horſes and Cattel that are fatted; for Tithe muſt be paid for theſe, for the paſture and profit of the Cattel, whether they go on the Common or elſewhere.

2. If two Pariſhes together have Common, becauſe of vicinage, and the Cattel of the one ſide do ſtray to the other ſide, and there abide; in this caſe no Tithe ſhall be paid for this to the Parſon of the Pariſh where the Cattel do ſtray, but to the Parſon of the other Pariſh. So if Sheep ſtray out of one into another Pariſh, and there eane, no Tithe is to be paid for this to the Parſon of that place; but if they go there by the ſpace of one Month or more, for this a rate Tithe muſt be paid to that place where they are for a Month together. And ſo in all caſes where Sheep go a while in one, and another while in another Pariſh. *Trin.* 7. *Jac. B. R. Broo. Diſmes* 16.

3. If Sheep after they be ſhorn die before *Eſter* next following

following, it is said no Tithe shall be paid for their wool, unlesse the Parson or Vicar that claims it, can alledge a special prescription for it. So no Tithes are to be paid of the pelts or fells of sheep which die of the rot, without a special prescription for it. *Trin. 3. Car. B. R. Ashton's Case.*

4. Tithe must be paid for all the grounds within the Parish; and therefore if the grounds within the Parish be let, or the herbage there be sold to a stranger out of the Parish, the Tithe must be paid to the Parson, and that by the Owner of the Cattel, unlesse the course there be otherwise. Grounds let.

5. It seems Tithe is to be paid for the Agistment, that is taking in of Cattel of strangers in the Parish: And that to be paid by the owner of the land that took them in, and not by the owner of the Cattel, for the Parson may not know the owner of the Cattel. *17 Jac. B. R.* But if there be any custome against it, this may prevent it, and make it payable by the stranger. Agistment, or tack of Cattel.

6. No Tithe is to be paid for the herbage or feeding of riding horses, that the Parishioner doth use for his own riding. And if a man let out his pasture lands, reserving the pasture for one horse to ride about his own affairs, or for husbandry, no Tithe shall be paid for the pasture for this horse. But if a man keep or breed a horse or horses in his pasture to sell them, there a Tithe shall be paid for the horses pasture. *H. 15. Jac. B. R. Hides Cas.* Horses.

7. No Tithe is to be paid for the grasse eaten by the working Oxen or Horses about Husbandy that are used in the Parish about Husbandry. But if the Parishioner use them to other purposes within the Parish, or for Husbandry without the Parish, it may be otherwise. *M. 8. Jac. Co. B. in Baxters Case.* Plough-Cattel.

8. No Tithe shall be paid for the feeding of Cowes that give milk, nor for barren and dry cattel that are bred for the plough or paile, whether they feed in the inclosed or in the common grounds of the Parish. But if a man keep cattel until they are ready for the pail or the plough, and then sell *Sect. 4.* Cowes and barren Cattel.

them, and make profit of them, in this case he is to pay Tithe for them; for if the owner feed his ground with Cattel that bring no profit to the Parson, he must pay Tithes for them. *M. 8. Jac. Co. B. Baxters Case. Trin. 9. Jac. B. R. The whole Court.*

Strangers renting within the Parish.

9. If a stranger feed a ground within the Parish with his Cattel that do bring no profit to that Parson or Vicar, he is to pay Tithe for it. And therefore it seems reasonable, though it be his own ground that is the stranger, and he feed them with his own Cattel that do work in another Parish, that he should pay as a stranger that doth rent a ground within the Parish.

Eamouth, or after-pasture.

10. No Tithe is to be paid of the Eamouth or after-pasture, after the grass is mowed and Tithe hath been paid of it, unless by covin there hath been more grass left than is usual. Nor is there any Tithe to be paid for the herbage of the Cattel that eat up the same grass, unless there be some Fraud in the case. *Pasch. 17. Jac. Co. B. Adjudg. M. 6. Jac. Co. B. Smiths Case.*

11 No Tithe is to be paid for the grass or herbage of the studs, or meers of ground at the Lands end, and adjoyning to the arable Land, where the Land it self doth pay Tithe. And so if Lands lie fallow every second or third year, the Owner shall pay no Tithe for the pasture of this Land, nor for feeding upon the stubble, albeit it be fed with barren Cattel. *Pasch. 7. Jac. Co. B. Adjudg.* And yet if he keep it lay beyond the course of Husbandry, in this case he is to pay Tithe again.

Rakings of stubble.

12. No Tithe is to be paid for the herbage of the ground whereupon Corn hath been sowen that hath paid Tithe, no more than for the raking of the stubble. *Pasch. 7. Jac. Co. B. Adjudg.*

13 If a man bring a flock of Sheep to dung the Land, and they come by night only and lie there, no Tithe is to be paid for this; but if they feed there half their time, they will be Titheable.

For the time when and how these Tithes are to be paid and done, see in *Chap. 5. Sect. 1.*

Tithes

Sect. 5.

Of Corn sown.

Tythes also are to be paid of all such things as come in yearly by the blessing of God, and the industry of the party together. And therefore Tythes must be paid of all kind of Corn sown upon the ground; as Wheat, Rye, Barley, Beans, Pease, and the like, to be set out after the custom of the place. So also Tythe must be paid of Plants, Herbs, and seeds of Woad, Saffron, Flax, Hemp, and the like.

And as to this, these things are to be known;

1. No Tythe is to be paid for the after-rakings, or stubble of Corn, when Tythe hath been paid for the Corn it self, unless it be where there hath been fraud in cutting it over-long.

2. No Tythe is to be paid for the course Corn, as Vetches, Tares, and the like, which is eaten up by the Cattel that do the Husbandry there: whether it be eaten green or ripe, or eaten upon the ground where it groweth, or elsewhere, unless the Parson have a special custom for it.

Change of Grain.

3. If Corn be sowed where Woad was sown, or where other things grew, the Tythe shall be paid of this, and in its own kind also. So if Woad or other things be sowed where Corn hath been sowed, the Owner of the Soil must pay his Tythe, and pay it in kind of that which groweth there, as he doth in the change of Wheat, Beans, Barley, *&c.*

4. If the Soil of an Orchard be sown with any kind of Grain, the Parson will have Tythe of it; although he have Tythe of the fruit of the Trees, for they are of several kinds.

Sect. 6.

Of Cattel and Fowle.

Tythes also must be paid of Calves of Kine, Lambs of Sheep, young Piggs of Sowes, Colts of Mares, Kids of Goats, *&c.* Also of the Cheese and Milk of Cowes, Sheep and Goats, and of the wool of Sheep, and of the Eggs and young of Hens, Geese, Ducks, *&c.* and of the Honey and Wax of Bees, and for dry Cattel, and for fat Beasts sold and killed, and according to the course of the place.

But

But for the further opening hereof, these things are to be known.

1. If the Parishioner have but nine Piggs, or six Calves, the Parson can have no Tythe in kind that year, without a special custom to warrant it; as in many places there is; for these things are intire, and not dividable as wool is. And therefore the Parson must have his Tythe *pro rata*, either in money the same year, if there be any custom for it, or in Kine the next year, and so reckon both the years together. *M. 7. Jac. Co. B.* And if a Parishioner have but one Cow, or milk his Cow every second day, so that he can make no Cheese, in this case the custom of the place is to be observed, so that something be paid; otherwise no custom in this case will bind; so for Calves, Colts and Kids, when they are under the number of Tythe in kind; and if there be no custom in it, the Parson must have the Tenth when ever it comes.

Dry Cattel.

2. It hath been said, that no Tythe is to be paid for dry Cattel bred for the Plough or Pail, unless they be sold away before they be put to that use; for Tythe must be paid for such Cattel, and for fatting Cattel sold or killed after the custom of the place. *M. 17. Jac. B. R. curia. M. 2. Jac. B. R. Webs Case.* And though at first they were bred for the Plough or Pail, yet if after fatted and kil'd, or sold, Tythe must be paid for them. *M. 8. Caroli, by three Justices.*

Locks of wool.

3. Tythe must be paid of the locks and flocks of wool, after the wool made up, if they be more than ordinary, and left deceitfully; otherwise not.

Rate Tythe for wool of sheep, and of young Cattel.

4. Where Sheep be removed from one Parish to another, each Parson must have *pro rata*; but under three dayes, no rate is to be paid: As for Example, If forty Sheep yield eighty pound of wool, and these have been fed and lain all the year in one place; in this case the Parson of the place must have all the Tythe, if the Sheep were there but half the year, then he is to have but forty pound of the wool, if three Months only, then but twenty pound of the wool; and so ratably for four or five Months, more or less. And the

Parson

Parſon in whoſe Pariſh the Sheep lay and fed but one Month, he ſhall have only the Tythe of the twelfth part of the wool: And if the Sheep feed all the year in one Pariſh, and lie in another Pariſh, the Tythe ſhall be divided betwixt the Parſons. And if Sheep come from one place, and be ſhorn in a place where they were not before, it ſeems the Tythe muſt be paid where the ſheering is, unleſs it appear to be paid to the Parſon of the place from whence they came. And ſo of the young of Cattel, Lambs, Calves, Piggs, Colts, and the like, where the Dam was removed from one place to another, a rate Tythe muſt be paid to the Parſon according to the times of their abode in the ſeveral places, from the times of their engendring by the Month rate. *Broo. Diſmes* 16.

5. If any have Cattel Tythable feeding in any waſte place, not commonly known to be in any Pariſh, yet the Tythe thereof is to be paid, and to be paid to the Parſon of the place where the owner of the Cattel doth dwell.

6. When the Tenth part of the Milk is paid, there muſt be no Tythe paid of the Cheeſe which is made of the other nine parts of the Milk. And ſo where Tythe is paid for the Cheeſe, no Tythe is paid for the Milk.

But ſee more of this, and when, and how this is to be paid and delivered, in *Chap.* 5. *Sect.* 2.

Sect. 7. Of Parks, Warrens, Pools and Dove houſes.

Some Tythe is to be paid of Parks, Warrens, Pools, Ponds, and Dove-houſes, and for Coneys, Pidgeons, and Fiſhes. And ſome would have Coneys in a Coniger, Fiſh in a Pond, or ſeveral fiſhing in the nature of Predial Tythes, and that Tenth of the profit is to be allowed.

But for the opening of this, take theſe things.

Coneys, Fiſh, Pidgeons.

1. That where the things bring in a certain profit, and without much charge, as Coneys, Fiſh and Pidgeons, there is great reaſon the Parſon or Vicar ſhould have the full Tythe of them; and in theſe caſes a diviſion may be eaſily made.

2. The Pidgeons are a ſenſible loſs to the Parſon in the deſtruction of Corn, and good reaſon then the Parſon ſhould have ſome profit of them.

3. In ſome caſes, as where Gentlemen have turned their Fields

Fields into Conigers, and laid down the Tillage, the loſs of the Parſon hath been notorious, and the caſe grievous hurtful to the Parſon and Commonwealth, profitable to none but the Owner of the Land; theſe caſes deſerve no favour.

4. We conceive the Parſon will have no remedy in this caſe by Law; and that in all theſe caſes there is nothing to be had but what the cuſtom or uſage yields; for Deer and Coneys being wild, are not reckoned a mans own till they are catched. And a man is to pay Tythe of nothing whereof he hath not a property, except only the perſonal Tythe, which is a ſmall matter. When Pheaſants, Partridges, Swans, and ſuch like wild things of profit become tame, it ſeems they muſt pay Tythe, but not otherwiſe. And for ſuch things of pleaſure as are of no profit, as Hawks, Hounds, Apes, Thruſhes, Popping jayes, and the like, no Tythe ſhall be paid of theſe.

Feræ Naturæ.

Matters of pleaſure.

Perſonal Tythe. Trades and labours.

Some Tythe hath been by uſage paid in the nature of perſonal Tythe for mens Trades and labours. So Fiſhers, Fowlers, Hawkers, and the like, not ſuch as fiſh, hunt, and fowle for pleaſure; but ſuch as make a Trade of, and get by fiſhing, hunting and fowling, have paid. So Carpenters, Maſons, and all Handicrafts men have paid; ſo Merchants, Mercers, Drapers, and all Tradeſmen: ſo Men-ſervants and Maid-ſervants have paid ſome ſmall matter in the nature of an Offering, as the Tenth of their clear gain once a year to the Parſon: and this to be paid ſtill according to the cuſtom of the place.

And for any other things, or for things Tytheable out of any Land, which by the Laws, by any Priviledge, Preſcription or Compoſition ought to be diſcharged, no Tythe is to be paid.

See more of this, and how theſe Tythes ſhall be paid, *Chap.* 5. *Sect.* 3.

CHAP.

CHAP. VI.

When, where, and how Tithes payable must be paid and set forth, and when the parson &c. may take them?

FOR answer to this Question in general, the Law saith, That all Tithes and Church-duties are to be yielded and paid according to the usage and custome of the place where they are to be paid. *Stat.* 27. *H.*8. 20. 32. *H.*8. 7. And for Predial Tithes, the tenth part of the profits are to be set forth and divided from the nine parts, in the place where they grow, before the Owner take away his part thereof: and the Owner is to send to the Parson, who is to send his servant when the Tithe is to be severed, and see that it be justly done; and then the Law doth give him a reasonable time to take it away. And if Tithe be once set out and divided, the Parson, not the Parishioner must look to it, for he must bear the loss of it, if any come to it. And this setting out of the Tithe, the Law saith must be effectual; and therefore if the Owner set out his Tithe and then take it away again, this is not a good payment of his Tithe: and if the Owner sell the whole to another before the Tithe be set out, with an agreement to deceive the parson; this is fraud and not allowed for a good payment in Law. And this must be heeded as to the manner of Tithing, That the custome of the place is to be observed, for in some places the custome is to leave the Tithe in grass in swathes, in other places in windrowes, in other places in grass-cocks, and in other places in hay-cocks, and either way it is good. So for the time when, and place where, the custome of the place must be followed, but the parson shall

have reasonable time to take it away. *Broo. Trespass* 125 *Cook* 2 *Part instit.* 610.

Of trees and wood.

To give to the Parson the tenth Acre of wood in a Coppice, or the tenth cord (if the cords be equal) is a good payment and setting forth of this Tithe, especially if it be the custom of Tithing wood in the Country.

The Tithe of the Mast of Oak and Beech, if it be sold, must be answered by the tenth penny; if it be eaten by pigs, the tenth of the worth thereof must be answered. And the most reasonable way of payment for any thing sold, is to pay the Parson the tenth penny of the mony made thereof.

Of Houses in *London*.

The payment of Tithes and Church Duties in the City of *London*, which is 2 *s.* 9 *d.* in the pound of the rent of their Houses, is to be made according to the usage there. *Stat.* 27. *H.* 8. 20. and 32. *H.* 8. 7. 37. *H.* 8. 12. *Cook*, 11, 16.

Sect. 1. Of Mills.

The Tithe of the new corn mil must not be the Tenth penny of the rent, but the tenth measure of the corn, or the tenth toll dish, if there be no custom in it. But the Millard for his fulling-mil, Rape-mil, Paper-mil; Iron, Powder, Lead, Edge, Copper, and Tin-mils; and so for an ancient Corn-mil, is to pay only personal Tithe, as for a Handicraft or Faculty. *Pasc.* 17. *Jac. Johnsons Case, Fitz. Nat. Brev.* 41. *G. Cook* 2. 44. And if a rate Tithe be paid for two mils in one house, and one of them is made a Corn-mil, in this case Tithe shall be paid in kind for this mil. And if one pair of mil-stones be turned into two pair of Mil-stones, now both of them must pay Tithe, and the priviledge is lost, *Brownl. Rep.* 1. *Part* 31.

Of grass, cut or eaten.

The Tithe of hay may be set out and delivered in swathes, windrows, or cocks, as the custom of the place is.

Fruits of trees, as Apples, &c.

The Tithe fruit of Apple-trees, Pear-trees, & the like trees, are to be set out and delivered when they are newly gathered, and if then the Owner do not give the Parson notice & set them out, and they be by his means lost or impaired,

the

the Owner is chargeable to the Parſon in treble damages.

The common courſe of ſetting out and delivering corn by the common Law, is by the tenth ſhock, cock, or ſheaf, but if the cuſtom of the place be otherwiſe, the Parſon muſt ſit down by it; and if there be a cuſtom to put the corn into ſhocks, and that every ſhock be ten ſheaves, and that the Parſon muſt have the tenth ſhock, it muſt be done by two Juſtices, *B. R.* But without a ſpeciel cuſtom binding the Owner of the Land, he is not bound to ſet the Parſons part of the corn up an end in ſhocks. *Smiths Caſe, Co. B. the Court.* Of corn ſowen

The Tithe ſeeds and herbs of gardens and fields, as Rape, Hemp, Flax, Parſly, Fennel, and the like, and of Sage, Mints, Onions, Leeks, and the like, either of the ſeed or of the herb before the ſeed time; this muſt be paid at the time when the Owner doth receive in his nine parts thereof. Of ſeed and herbs.

Sect. 2. Of calves and lambs:

The time when the Calves and Lambs are to be paid and delivered, is when they are weanable, and able to live without the Dam, and unleſs there be any cuſtom herein againſt the Parſon, at this time all theſe young things are to be delivered. And if the owner ſell any Calf or Lamb, in moſt places the Parſon is to have the tenth penny of the mony, and ſo he muſt, if there be nothing in the cuſtom againſt it. And if the owner kill a Calf, in ſome places the Parſon hath the right ſhoulder, and the cuſtom muſt be yielded to as reaſonable, if any thing though never ſo little be paid for it, otherwiſe not.

The Tithe of milk and cheeſe is to be paid in the ſeaſon thereof, and ſo long, and ſo ſoon as either of them is taken by the pariſhioner. Of milk and cheeſe.

The tenth meaſure of hony and the tenth weight of wax, not the tenth Bee, nor the tenth ſwarm of Bees is to be paid for Bees. Bees.

The Tithe of chicken and eggs, of all kind of tame birds, or fowl, as Swans, Hens, Ducks, Geeſe, they are to be delivered and paid, or that which is paid for them, according to the cuſtom of the place. But for wild Swans, Geeſe, Of hens ducks wild and tame.

and Dukes, if they be taken in, and from a certain and known place, they are ſaid to be Tithe-ble as predial Tithes, but if from incertain and unknown places, they are ſaid to be as perſonal Tithes. But I ſuppoſe no Tithe is to be paid in either caſe.

Sect. 3. Perſonal Tythes.

For perſonal Tithes, which is for Trades, Crafts, and manual Occupations, and the profit made thereby: It is provided by a ſpecial Law, That all ſuch as uſe trading, buying and ſelling, handicraft, (except common labourers) ſhall pay their Tithes, as they were uſed to be paid forty year before the Statute of 2 *Ed.* 6. and as of right they ought to be paid. And for this the Pariſhioner doth uſe at or about Eaſter (in moſt places the uſual time of payment for ſmal Tithes) to pay a ſmal ſum of mony to the Parſon or Vicar. And according to the cuſtome of the place men are to pay, for without a cuſtom for it nothing at this day is to be paid for this: by three Judges. *Co. B.* 17. *Jac.*

And for all, or any of theſe things in caſe where the Owner may let or ſel the thing of which the Tithe is to be had, the beſt way is to let the Parſon or Vicar have the tenth penny made by the ſale, as they have generally of grounds let to ſtrangers out of the Pariſh, in which caſe the Parſon hath commonly, and muſt have, if there be no cuſtom againſt it, the tenth penny of the Rent.

But in no caſe the Parſon or Vicar may take his Tithe before the ſame be ſevered from the nine parts and Tithed. And if the Owner will not cut his corn till it be ſpoiled, the Parſons is remedileſs. 12 *Ed.* 4. *D. & St.* 169.

CHAP.

CHAP. VII.

Who muſt pay the Tithe that is to be paid, and may be ſued for it? and to whom the Tithe muſt be paid?

FOR anſwer to the firſt part of this Queſtion, take theſe things. *Sect.* 8.

1. That generally he that receiveth the nine parts, is to pay the tenth part to the Parſon. And yet if a man that is owner of a Coppice, or other ſuch like thing, and he cut it and ſell it all; in this caſe the Seller muſt anſwer the Parſon for his Tithe, and not the buyer. And therefore if *A.* cut the graſs of his ground, and put it all (not ſetting out Tithe) on a rick on the ground, and three months after he ſell it away to *B.* in this caſe *B.* cannot be ſued for this Tithe. *Hil.* 16 *Jac.* By chief Juſtice in *Aſhfields Caſe.* And if one ſell Under-woods ſtanding, the buyer, not the ſeller muſt anſwer the Tithe. But the Tithe due for ſellers before the ſale, the ſeller muſt anſwer for this.

2. If a Pariſhioner die before he pay his Tithe; his Executor, if he have aſſets, muſt pay it. Executor.

3. If a Pariſhioner let or ſel his ground or herbage, it is ſaid the Parſon may ſue the Owner of the ground, or the Owner of the Cattel, at his choice, which is reaſonable, if the uſage be not againſt it.

4. If cattel be pawned or pledged, the Gage muſt pay Tithe for them. But if I deliver my goods to *H.* to be redelivered to me, I muſt pay Tithe for them.

And for anſwer to the ſecond part of this Queſtion, theſe things are to be known.

1. The Tithes muſt be paid to him that hath right to them,

them, he be lay-man, as an impropriator, or a Clergy-man (as we have called them) and be he Parson or Vicar of the place.

2. The rule generally is this, That the Tithe must be paid to the Parson or Vicar of the Parish wherein it ariseth, and not the Parson or Vicar of another Parish.

3. The Tithe hapning in the time of the vacation, the succeeding Parson is to have it; but they that gather it in may keep up so much thereof, as to pay them their charge in the collection thereof, and to Ministers that did serve the Cure there. And if one be put into a place, and then he is removed, and another is put in, the first of these shall have the Tithes that hapned in the vacation time. *Hil. 18. Jac. Woods Case.*

4. If any man have Cattel titheable feeding in any waste, or place which is not certainly known to be in any Parish, the Tithe thereof shall be paid to the Parson of the place where the owner of the Cattel doth dwel.

5. If a man living in the Parish of *A.* being a Common Fisher, Fowler, or Hunter, Fish, Fowl or Hunt in the grounds of *H.* in *B.* and take Fish there, if this were free and without reward in *H.* then it is a personal Tithe, that must be paid to the Parson of *A.* but if *H.* had money or reward for this, then it is said *H.* must pay the Parson of *B.* as for a predial Tithe.

6. Personal Tithes are always to be paid to the Parson or Vicar of that place where the person that is to pay the Tithes, doth well.

CHAP.

CHAP. VIII.

Which way the Owner of Tithes, and such like things, may recover them being detained.

FOR answer to this, we are to know, that by the ancient Law of the Nation, Tithes were not recoverable by any man in any place but in the Spiritual Court, and there by no person, but such as they called Spiritual persons, or Clergy men, and this Ecclesiastical Court is gone. But they are now recoverable by all sorts of men alike, and in these ways. First for Predial Tithes, such as are the Tithe of wood, grass, fruit, hay, & the like divideable things, if these be not duly and truly divided and set forth, as before is shewed they ought to be, the Parson or Vicar may sue for them in any of the Courts by an Action of Debt, wherein he shall recover treble damages upon the Statute of *Ed.* 6.

But for lesser Tithes of Wool and Lamb, and the like, no Action will lye upon this statute, nor for mony given to the Parson in lieu of them. But for the one and the other, the party grieved may at this day sue in the Chancery or in the Exchequer, or before two Justices of the Peace, who in most cases for all Tithe, Offerings, Oblations, Obventions, rates for Tithes, and all Arrears thereof, are to give relief, *Stat.* 27. *H.* 8. 20. 2 *Ed.* 6. 13. 32. *H* 8. 7. *Cook upon Lit.* 159.

And if the Tithe be once severed and set forth, and they be after taken away by the owner of the land or a stranger; in this case the Parson may have an Action of Trespass against him *Brov. Disines* 6. *Brownl.* 2. *Part* 30.

CHAP.

CHAP. IX.

In what Caſe, and how a perſon or place may be quit and diſcharged of Tythes: And what ſhall be a good diſcharge or not.

Sect. 2.

Spiritual perſons were ſome of them formerly diſcharged of Tithe by their Order, but there are no ſuch diſcharges now; but a diſcharge of Tithes may be at this day by the cuſtom of a Country, or by a preſcription, or by a Compoſition, which at firſt was made by and between the Parſon, Patron, and Ordinary, and another, or by an alteration of the place out of which the Tithe doth come, or by an act of Parliament, and by a unity of poſſeſſion, *Cook* 1 *Part* 33. 2 & 3 *Ed.* 6. 13. 32 *H* 8. 7. *Cook* 44. Or by priviledge, as certain Religious Orders, Templars, and others, of which there are none with us. And therefore no ſuch diſcharge can be amongſt us at this day. *Brownlow's* 2 *Part* 33. Or they may be ſuſpended for a certain time, and revived again. Of all which ſee examples in the caſes that follow.

A man may be diſcharged of payment of Tithe by a cuſtom of preſcription. Wherein theſe things are to be known.

By cuſtom or preſcription: And what is good or not.

1. Cuſtom and preſcription do differ but little; cuſtom goes to a place or Country, and preſcription to a perſon.

2. A cuſtom applyed to a Country to pay no Tithe, in ſome caſes, as the cuſtom for the Wild, being forty Pariſhes in *Suſſex*, to pay no Tithe, is good. But generally ſuch a cuſtom is not good; and a preſcription to pay no Tithe, nor any thing in lieu of it, is not good, nor will it diſcharge, though nothing can be proved to be paid within the time of memory. *D & St.* 171. 167. *Broo. Preſcript.* 92. *Cook* 244. And

yet

yet one may ſhew a diſcharge of his Land another way, which will amount to the payment of no Tythe, nor nothing for it.

3. But any man may preſcribe *de modo decimandi*; i. e. to pay money, or other things in lieu of the Tythe in kind for a Mannor, Farm, or piece of Land; and if he can prove this time out of mind, this will diſcharge him. *Cook* 1.44,45. And therefore a Preſcription to pay 4 d. or any other ſum of money for all his Tythe whatſoever, or all his Tythe Hay, or all his Tythe Corn in ſuch a Farm, or ſuch a Cloſe, is good. If one preſcribe that he is to put the Corn of the ground in Hillocks or Cocks, &c. And that for this the Parſon is to have no Tythe Corn every ſecond year, or is to have no Tythe in ſome part of the ground, this is good. So if he preſcribe to pay the tenth fleece of wool, and for this to be diſcharged of the Tythe of the locks, this is a good Preſcription. 36,37. *Eliz. Co. B. Jeſops Caſe.* But if one preſcribe, that becauſe he doth pay Tythe Hay, he is to pay no Tythe Corn; or becauſe he payeth Tythe Corn, he is to pay no Tythe of his Cattel, this is not good. *Smiths Caſe. Hill.* 8. *Jac. B. R.* So if one preſcribe to be diſcharged of Tythes in one place, becauſe he payeth Tythes in another place; or to be diſcharged of Tythes of Lambs, becauſe he payeth Tythe of wool; or to be diſcharged of Tythes of other Cattel, becauſe he payeth 12 d. for a Cow, theſe are not good preſcriptions. *Fleetwoods Caſe.* 7 *Jac. Co. B.* If a Cuſtom be alledged, That the Parſon ſhall have but the tenth ſheaf of wheat for the Tythe of all manner of Corn and Grain, this is not a good Cuſtom. *Mic.* 11. *Jac. Co. B. Jacks Caſe.* 38. *Eliz. Co. B. Adjudg.* So a Cuſtom was alledged, That the Owners of a Farm had been uſed time out of mind, to take back 30 ſheafs of their Tythe Corn again after it was ſet out, to their own uſe; this was diſallowed.

4. A Preſcription to pay a ſhoulder of a Buck or Doe when they are killed, in lieu of all the Tythe of a Park, is good, and will diſcharge the Park. 3.7.& 37. *Eliz. Shipdams Caſe.* And although after the Park be diſcharged, and converted into Tillage or Hop-ground, yet it is held that the Par-

ſon ſhall not have Tythe in kind, but the diſcharge ſhall continue, *M.* 5. *Jac. Co. B. Adjudg. M.* 11. *Jac. Co. B. Compers Caſe.*

Sect. 2. 5. A Preſcription to pay a leſs part than the tenth part, may be good and binding.

6. A Preſcription that if one have leſs than ſeven Lambs, he ſhall pay but 1 d. a piece for them, is good. *Curia. 7. Jac. B. R. Patches Caſe.*

7. A Preſcription to be diſcharged of Tythes for every houſe in *London*, in lieu of 12 d. of the Rent made of the houſe, is good. *Cook* 11. 16. And ſo for any other thing that may be conceived to have a reaſonable Commencement, the Law will admit it.

8. One may preſcribe, That he, and all thoſe whoſe Eſtates he hath in the Mannor of *Dale* in *Dale*, time out of mind, have paid to the Parſon of *Dale* for the time being, a certain Penſion yearly for the maintenance of Divine Service there, in ſatisfaction of all the Tythes ariſing and growing within the Mannor of *Dale*; and preſcribes further, That he, and all thoſe whoſe Eſtates he hath in the ſaid Mannor, time out of mind, have been uſed in regard of the ſaid Penſion ſo paid to the Parſon, to have all the Tythes hapning and ariſing within the ſaid Mannor, or any part of it; *viz.* of all the Lands held of the ſaid Mannor, or any parcel of it; this is a good Preſcription, and may have a reaſonable beginning thus, That the Lord was ſeized of all the Mannor before the Tenancies derived out of it; and by ſome good Compoſition or Grant between him, the Parſon, Patron and Ordinary, it was granted to him in lieu of this money, which muſt be intended, becauſe time out of mind, it hath been ſo paid. *Cook* 7. 45. But without ſome ſpecial matter alledged, a Lord cannot preſcribe after this manner in him and all thoſe, *&c.* generally.

9. Alſo a Pariſhioner may be diſcharged of Tythe by an agreement with the Parſon; if he be a ſpiritual perſon, he may diſcharge it for his life; if he be an Impropriator, he may diſcharge it for all the time he hath the Parſonage. But a ſpiritual perſon cannot by his agreement bind his Succeſſors.

ceſſors. And payment of a ſum of money in lieu and recompence of Tithe for ſixty years, or thereabouts, is held a reaſonable time to make a Preſcription. *Cook upon Litt.* 14 *Crompt. Jur.* 77. *Dyer* 7, 9.

Sect. 3. By an alteration of the place or thing out of which the tithe doth come, or by other alteration. Whether gone or not.

Tithe may be diſcharged by the alteration of the place or thing out of which the Tithe is to come; for the opening of which take theſe things.

1. If one preſcribe to be diſcharged of payment of Tithe hay for ſuch a ground, or the Tithe Corn of ſuch a ground, and the Owner change the nature of the ground, the paſture into tillage, or tillage into paſture; in theſe caſes the Preſcription is gone. *Hill.* 7. *Jac. B. R. Shipton's Caſe, adjudg.* But if the preſcriptions be general, 4 d. for all manner of Tithe ariſiing in ſuch a ground, there the alteration will not hurt the Preſcription. So it is if one preſcribe to pay the ſhoulder of every Buck and Deer of his Park for all manner of Tithe of the Park, and the whole park be after diſparked and ſown to Corn, it is ſaid the Preſcription is gone, and that Tithes muſt not be paid in kind; but if any part of it remain a Park, and the reſt only be ſowed, it is otherwiſe. 36. 37 *Eliz. Shipdams Park in Norfolk.* So it is ſaid, if all the Park be ſuffered to fall down, which is a diſparking in Law, of the Park, yet the ſame doth not deſtroy the manner of Tithing, for the ſame may be a Park again: But ſome doubt of this. And a difference hath been taken, where a Preſcription runs to ſo many acers of Land certain, for in that caſe the *modus* continueth: and where to the Park in the name of a Park, in which caſe it is gone if it be diſparked. *Paſch.* 19. *Jac. Co. B. Pools Caſe.* and *in Brownl. Rep.* 1 *Part Paſch.* 10. *Jac. Co. B.* 35. It is doubted whether the Tithe be not gone in both caſes; and held, That if a man can preſcribe for ſo many Bucks, that this Park is diſcharged, and if it be diſparked, that the preſcription is not gone.

2. And if two Fulling mils be under one roof, and a rate Tithe be paid for the mils (which is a kind of preſcription) and after the mils are altred, and made into one Corn-mill, in this caſe the preſcription is gone, and Tithe

ſhall not be paid in kind. So if there be but one pair of ſtones in the mill, and after there is another pair of ſtones put in the mill; now Tithe muſt be paid in kind, and the manner of Tithing is gone. *Brownl. Rep.* 1. *Part. Paſch.* 10. *Jac.* 31.

3. If I have the Tithe of the hay of a cloſe, or all manner of Tithe there, and the Owner of the ground turn it from Meadow to tillage, or to hops, or the like, or turn it from tillage to paſture, the Tithe is not gone, but ſhall be paid in kind as it falleth. So if one turn wood ground into meadow or tillage, the Owner ſhall pay Tithe in kind, and Tithes is not loſt hereby; only if it fall out to be within the caſe of barren heath, he ſhall pay for ſeven years no more then was paid formerly for it. See it before. *Paſch.* 18. *Jac. B. R. Court in Baxters Caſe.*

4. If one be to pay a ſum of money for the Tithe of a piece of ground; and the ground be after turned to houſes and gardens; in this caſe the manner of Tithing doth continue. *Cook* 11. 16.

5. If one turn his paſture into a Coniger, and make coney-burrows in it, the Tithe will not be gone. But I conceive, it doth continue as it did for the manner of Tithing as before, and no new manner of Tithing. See before Tithe of Coneys *M.* 13. *Car: B. R.*

6. If the Vicar keep the Glebe in his own hands, it is ſaid, that ſo long he is to pay no Tithe to the Parſon impropriate. But if he leaſe it to another, then the Leſſee muſt pay Tithe to him; and if he ſow the Land, that he muſt pay Tithe as other men. *Brownl. Rep.* 69.

Suſpenſion.

7. If a Parſon impropriate keep his Glebe in his own hands, he cannot pay Tithe to himſelf. But if he ſell or let it to another, he ſhall pay Tithe as other men. And if a Parſon purchaſe Land within his Rectory, no Tithe is to be paid for this whiles it is in his own hands. But if he after leaſe the Parſonage; his Leſſee ſhall have Tithe of this new purchaſed Land. And if he make a Feoffment or Leaſe of the purchaſed Land, his Feoffee or Leſſee muſt pay Tithe again. *Cook upon Litt.* 139. 11. 14. *Broo. Diſmes* 17. *Dyer* 43.

And

And if one purchase a Parsonage and Mannor in the parish discharged of Tythes, and then lease part of the demesnes of the Mannor, it is said the Lessor shall have Tythe of this part. *Broo. Dismes* 17. *Sed quare* of this.

8. If Land lie in a Forrest in any Parish, and is Tythe-free, and the Forrest be dis-forrested, now it shall pay Tithe in kind. *Crompt. Jur.* 52. *Lord Ch. Baron at Sarum Assizes.*

The alteration of payment (as if instead of the money to be paid, another sum, or Tythes in kind have been paid for twenty years past) will not destroy the Prescription. *Cook upon Lit.* 14. *Dyer.* 7.

Sect. 4.
By Act of Parliament and unity of possession together. Whether gone or no.

Lands may be discharged from payment of Tythes by a unity of possession of the Parsonage, and Lands which did pay Tithes by an appropriation or otherwise, in the hands of Religious and Ecclesiastical persons (as they were called.) So that now at this day by the Statute of 31 *H.* 8. 13. Such a unity in the said Religious houses and persons, will be a discharge to all Patentees from the payment of Tythes of Lands that came to the Crown by the same Statute. But then this unity in the said Religious persons must have been *justa*, obtained by Right; for if either the Parsonage, Vicarage, Tythes or Lands had come or been united to their houses by disseisings, or other tortious and unlawful acts, this had not been a good discharge within the Statute. 2. It must have been *aequalis*; there must have been a Fee-simple both in the Lands out of which the Tythes were to be paid, and in the Parsonage or Vicarage in them; for if the Abbots, Pryors, or other Religious persons had held but by Lease, that had not been such a unity as the Statute intended. 3. It must have been *libera*, free from the payment of any Tythe; for if the Farmers or Tenants at will, or for years, had paid Tythes, that had not been a sufficient unity to have discharged the Land. 4. And lastly, It must have been *perpetua*, time out of mind. And then for the infinite impossibility, and impossible infiniteness that such immunities and discharges, that such Religious persons and houses had before time of memory

memory could not be known, ſuch a unity had been a good diſcharge of the Lands in their own hands. And if the Monaſtry were built in the time of memory, or appropriated within the time of memory, and Tythe were paid before this, it will not ſerve turn to diſcharge it. And at this day ſuch an unity is a good diſcharge for the Kings Pattentees, with the Statute of 31 *H.* 8. But ſuch Lands as came to the Crown by the Statute of 27 *H.* 8. of Diſſolution, muſt at this day pay Tythes, although the Lands in the hands of ſuch Religious perſons or houſes were diſcharged from the payment of Tythes, for the priviledges being perſonal priviledges, were extinguiſhed by the Statute of Diſſolution, and there are no words in that Statute to ſave them. *Sta.* 31 *H.* 8. 13. 7 *H.* 4. 6. 32 *H.* 8. 7. *Cook* 11. 14. 2. 42. *Dyer* 278. 349. 277.

CHAP. X.

Of other Profits which the Parſon and Vicar doth claim.

THere are ſome other ſmall profits which Parſons and vicars claim, as belonging to their Parſonages and Vicarages, beſide Tythe, and money in lieu of Tythe, as Mortuaries, Oblations, Obventions, *&c.* And as to Mortuaries, theſe things are to be known. 1. That no Mortuary is to be paid, but where it hath been uſed to be paid 2. There ſhall be but one Mortuary paid, and no more. 3. No perſon that doth keep houſe muſt pay them. 4. No Woman that hath a Husband ſhall pay them. 5. No Children muſt pay them. 6. Where they are to be paid, they muſt be paid after this proportion; *viz.* he that dieth, having goods under ten Mark, ſhall pay nothing; for Goods above that value, and under thirty pound, but three ſhillings four pence; for Goods above thirty pound, and under forty

Mortuaries.

forty pound, six shillings eight pence; for Goods above forty pounds, how much ever it be, but ten shillings. 7. All this Account must be made only out of the goods remaining after debts paid. 8. The Parson of the place where the party dwells, not of the place where he dieth, must have it. *Stat.* 21. *H.* 8. 6. 26 *H.* 8. 15.

There is no more to be said for Obventions, Oblations, and Offerings, which seem to be all one, but that they by the Law now in force are to be paid as formerly they have been. *Stat.* 32. *H.* 8. 7. 27. *H.* 8. 20. 2. *&* 3. *Ed.* 6. 13. *Cook* 11. 16.

Oblations, Obventions, and Offerings.

FINIS.